

MONTANA LEGISLATIVE HISTORY

Chapter _____ 19 29

Bill H 329 S _____

Original bill & history 1 C

H. Committee on Ad. Revenue

Hearing Date(s) 2/19 1 C

Exec. Action 2/19 1 C

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Date Out _____ C

S. Committee on Ad. Revenue

Hearing Date(s) 2/16 1 C

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Did this bill originate in an interim committee? _____ Yes ✓ No

Committee _____

Report _____

HOUSE BILL NO. 329

INTRODUCED BY SHELLEN

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE PERIOD OF
EFFECTIVENESS OF THE ACT ESTABLISHING THE ENERGY SUPPLY
ALERT AND VESTING ENERGY EMERGENCY POWERS IN THE GOVERNOR;
AMENDING CHAPTER 577, LAWS OF MONTANA, 1977."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 21 of Chapter 577, Laws of Montana,
1977, is amended to read:

"Section 21. Period of effectiveness. This act is
effective on passage and approval and shall remain in effect
until March 1, 1979 1981."

-End-

HB 329

INTRODUCED BILL

JOHN C. SPINDLER, Anaconda Copper Co., spoke next in opposition and a copy of her testimony is exhibit 5 and part of the minutes.

FRANK DUNKLE, Montana Mining Association, spoke next in opposition and a copy of his main points is exhibit 6 and part of the minutes.

GENE PHILLIPS, ASARCO, said they second the points made by the Anaconda Company. He said they are already at the proposed plant monitoring water quality, and they have applied for a discharge permit for waste water as they plan to use it in a closed circuit. He said they have applied for their operating permit from the Department of State Lands and they don't see why they should do more than they are already doing with the Department of Health.

During questions from the committee, Mr. Berry said diverse, native vegetation is language similar to the Strip Mining Act and 51% of the seeding mixture must be native and up to 49% can be introduced.

In closing Rep. Fagg said the problem addressed by this bill is not adequately covered by another law as the opponents have claimed. He said the water problem is not covered. He said we are looking at some major mining development and now before it starts is the time to get a handle on it--he said we don't want to see it stopped, just adverse effects controlled.

HOUSE BILL 329

REP. ARTHUR SHELDEN, District 22, (Vice-Chairman Harper had taken the chair), the chief sponsor, said this bill extends the energy supply alert and the governor's emergency energy powers for two more years.

GENE PHILLIPS, Pacific Power and Light, said they supported this bill two years ago and would urge the extension of the date.

CAROL L. KIRKLAND, Montana Petroleum Association, said they support the bill.

LES LOBLE, Montana Dakota Utilities, said they support the bill.

No questions from the committee. Rep. Shelden said he closed and took back the chair.

HOUSE BILL 759

REPRESENTATIVE VERNER BERTELSEN, District 27, the chief sponsor, said this bill has to do with the removal of slash from our forests. There is a \$5 per thousand foot fee charged now to the owner or operator to insure the slash removal. This bill would raise it to \$7.50. This is needed as the state paid \$108,000 this past year for this while receiving only \$23,000 in fees. If the owner/operator does his own removal the fee

Rep. Huennekens then moved on page 6, line 5, to strike the "14" and insert "7." Sanna Porte was asked for information and said this was at the request of some of the grocers--who would be waiting for the distributors to come back and reimburse them. The motion to agree on this amendment passed unanimously with the committee. These amendments will be added on the floor. A statement of intent will also be prepared and added to the bill, exhibit 6. A roll call vote was taken on the motion of do pass and the motion carried with 11 voting yes and 7 no (Burnett, Iverson, Johnston, Spilker, Nathe, Quilici, Curtiss) and absent was Scully. Reps. Quilici and Curtiss left proxy votes.

HOUSE BILL 329 Rep. Harper moved do pass. The motion carried unanimously with those present (same proxy votes and same absent).

HOUSE BILL 816 Rep. Fagg moved do pass and the motion carried with 11 voting for and 6 opposed (Burnett, Curtiss, Iverson, Johnston, Spilker, Thoft); absent Reps. Scully and Quilici (no vote left on this bill); Rep. Curtiss left a proxy vote.

HOUSE BILL 444 Rep. Fagg moved do not pass. He said he was convinced uranium can't be added to the Hard Rock Act and there isn't time to write a bill on just uranium, so better to leave it in this bill. Rep. McBride made a substitute motion to table. It was discussed that in fairness to the sponsor the bill shouldn't be held in committee. A roll call vote was taken on the motion of tabling. It failed with 7 yes (Bertelsen, Cooney, Huennekens, Keady, Kessler, McBride, Metcalf); 9 no and 3 absent (Burnett, Quilici, Scully); Rep. Curtiss voted by proxy vote. The committee then voted on the original motion of do not pass and this motion carried with 13 yes, 3 no (Curtiss, Johnston, Spilker), and 3 absent (Burnett, Quilici, Scully), Rep. Curtiss voted by proxy vote.

HOUSE BILL 816 Rep. Fagg moved do pass. A roll call vote was taken and the motion carried with 11 yes, 6 no (Burnett, Curtiss, Iverson, Johnston, Spilker, Thoft) and 2 absent (Quilici and Scully). Rep. Curtiss voted by proxy vote.

HOUSE BILL 684 Rep. Nathe moved do pass. Rep. McBride said she wouldn't have as much objection if the original definition was left. Rep. Fagg said there is an effort in every legislature to make big miners into small miners--trying to escape having to comply. He felt the bill wasn't constitutional and there would be legal challenges. He felt a bigger favor for the little miner would be to not pass the bill. Rep. Thoft felt the roads ought to be reclaimed. Rep. Kessler wondered how much of a road a small miner would need. Rep. Fagg made a substitute motion of do not pass. This motion carried with 9 voting yes and 7 no (Bertelsen, Curtiss, Iverson, Johnston, Spilker, Nathe, Thoft) and 2 absent (Quilici and Scully). Rep. Curtiss had left her vote.

Natural Resources Committee Minutes
March 16, 1979
Page 2

Ms. Charlotte Easter, representing herself, was opposed to HJR 6 and submitted her testimony in written form (see attachment).

Mr. Bill Cunningham, Montana Representative for the Wilderness Society, was opposed to HJR 6 and said there are now strong fiscal arguments for preserving these lands. Mr. Cunningham presented some exhibits disputing the material presented by Mr. Holding (see attachments). Mr. Cunningham said he wants to see each proposed wilderness considered on its own merit.

Mr. Leonard Sargeant, Environmental Information Center, was opposed to HJR 6 and pointed out several aspects of HJR 6 which he felt were inaccurate.

Mr. Bill Bishop, Montana Wilderness Association, was also opposed to HJR 6 and said that the things it requests we already have so he felt it was unnecessary. Mr. Bishop submitted some information for the Committee to consider including a study on the RARE II project (see attachments).

Written testimony opposing HJR 6 was submitted prior to the meeting by Willa Hall, League of Women Voters (see attachment).

There being no other opponents, Vice-Chairman Dover opened the hearing to questions from the Committee and several questions were addressed to Mr. Holding and Mr. Sargeant concerning some of the comments they had made.

Representative Hand then made a brief closing statement and Vice-Chairman Dover turned the chair over to Chairman Roskie.

CONSIDERATION OF HB 329: "An act extending the period of effectiveness of the Act establishing the Energy Supply Alert and Vesting Energy Emergency powers in the Governor; amending Chapter 577, laws of Montana, 1977."

Chairman Roskie called on Representative Shelden, District 22, to present HB 329 to the Committee. Representative Shelden gave the history of HB 329 and told the Committee that it had been necessary to redraft the bill because the deadline had been reached before the legislature had been able to pass a law which would have extended the period of effectiveness.

Chairman Roskie called for any other proponents. Mr. Don McIntyre, Department of Natural Resources, spoke in favor of HB 329 and said it is the same bill passed by the 1977 legislature and merely re-establishes the provisions establishing the Energy Supply Alert.

Mr. Gene Phillips, Pacific Power and Light, and Carol Kirkland, Montana Petroleum Association, also spoke in favor of HB 329.

Natural Resources Committee Minutes
March 16, 1979
Page 3

There being no other proponents, Chairman Roskie called for any opponents and there were none. Chairman Roskie then opened the hearing to questions from the Committee and several questions were addressed to those that had testified about the possibility of an energy shortage in the near future. Mr. Robert Hall, Administrative Assistant in the Lieutenant Governor's Office, was also present to answer some of the Committee's questions.

Representative Sheldon closed by re-emphasizing the fact that a serious energy problem, particularly with electricity, is a very real possibility.

DISPOSITION OF HB 329: Senator Etchart moved to amend HB 329 on page 13, line 13, by inserting "and remains in effect until July 1, 1985" after "approval". The motion carried unanimously with those present.

Senator Dover moved to further amend HB 329 on page 3, line 20, by changing the 4 members to 8 members and also to amend HB 329 on page 8, line 4 by inserting "by the committee" after "finding". There was some discussion on Senator Dover's second amendment. It was determined that the second amendment was unworkable so Senator Dover withdrew his motion to amend HB 329 on page 8, line 4. Chairman Roskie called for a roll call vote on Senator Dover's first proposed amendment and the motion carried (see attachment).

Senator Lowe then moved that HB 329 BE CONCURRED IN as Amended. Chairman Roskie called for a roll call vote. The motion carried (see attachment).

Senator Brown moved that a statement of intent be added to HB 329. All those present voted in favor of the motion with the exception of Senators Manley and Lowe.

DISPOSITION OF HB 717: Senator Elmer Severson, District 46, proposed some amendments to HB 717 for the Committee's consideration. Senator Dover moved the amendments be adopted. The motion passed unanimously. Senator Dover then moved that HB 717 BE CONCURRED IN as Amended. The motion passed unanimously with those present.

Senator Dover moved that HB 716 be placed on the table. Chairman Roskie informed Senator Dover that HB 716 was not up for discussion today and Senator Dover withdrew his motion.

DISPOSITION OF HB 733: Mr. Gordon McGowen, Montana Railroad Association, presented some amendments to HB 733 for the Com-

STANDING COMMITTEE REPORT

March 19, 1979

MR. President

We, your committee on Natural Resources

having had under consideration Statement of Intent, House Bill No. 329

Respectfully report as follows: That Statement of Intent, House Bill No. 329 be adopted.

STATEMENT OF INTENT RE: HB 329

Because section 16 of this bill delegates authority to the governor to adopt administrative rules, this statement of intent is attached to the bill pursuant to 5-4-404, MCA.

Rules adopted under section 16 may include guidelines for determining the types and extent of limitations to be placed on energy use when a curtailment of essential services or production of essential goods has or will take place as the result of an

XXXXX
DO NOT

(Continued)

existing or imminent shortage of energy, thereby causing an energy emergency to be declared.

Further, the rules adopted may include guidelines concerning actions required to be taken to reduce energy use when a condition of energy supply will affect significantly the availability of essential energy supplies under the declaration of an energy supply alert. The rules may also include guidelines used in determining whether supply conditions warrant a condition of energy supply alert or energy emergency to be declared by the governor.

All rules adopted pursuant to this bill shall be with the advice of the energy policy committee established by this bill.

First adopted by the Senate Natural Resources Committee on March 19, 1979.

STANDING COMMITTEE REPORT

March 16, 1979

MR. President

We, your committee on Natural Resources

having had under consideration House Bill No. 329

Shelden (Jergeson)

Respectfully report as follows: That House Bill No. 329, third reading bill, be amended as follows:

1. Title, line 1.

Following: "AN ACT"

Strike: lines 4 through 7 in their entirety.

Insert: "TO REESTABLISH THE PROVISIONS OF CHAPTER 577, LAWS OF MONTANA, 1977, CONCERNING THE ENERGY SUPPLY ALERT AND VESTING ENERGY EMERGENCY POWERS IN THE GOVERNOR: AND PROVIDING AN EFFECTIVE DATE."

2. Page 1.

Strike: all of the bill following the enacting clause.

Insert: "Section 1. Legislative findings and intent. (1) The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to gather information, formulate plans, and institute appropriate emergency measures to reduce or allocate the usage of energy through a program of mandatory usage curtailment or allocation, a severe impact on the health, safety, and general welfare of our state's citizens may occur. The

(Continued)

prevention or mitigation of the effects of such energy shortages or disruptions is necessary for preservation of the public health and welfare of the citizens of this state.

(2) It is the intent of [this act] to:

(a) establish necessary planning, information gathering, and energy emergency powers for the governor and define the conditions under which such powers are to be exercised;

(b) provide penalties for violations of [this act].

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Energy facility" means a facility which produces, extracts, converts, transports, or stores energy.

(2) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(4) "Committee" means the energy policy committee established in section 3.

(5) "Distributor" means any person, private corporation, partnership, producer, individual

proprietorship, public utility, joint operating agency or cooperative which engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(6) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy which will result in curtailment of essential services or production of essential goods, or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved, and the allocation of available energy supplies among users.

(7) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis which foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under section 9 to reduce energy usage by state agencies and political subdivisions.

Section 3. Energy policy committee. There is established a legislative energy policy committee which consists of eight members. The members shall consist of the president of the senate and the floor leader of the opposite party in the senate and the speaker and minority leader of the house of representatives. Each leadership member shall designate one additional member within 15 days following the close of each session.

Section 4. Supply of vital public services during an energy supply alert and energy emergency. The governor shall, with the advice of the committee, in developing provisions for the allocation, conservation, and consumption of energy, give due consideration to supplying vital public services such as essential governmental operations, health and safety functions, emergency services, public mass transportation systems, food production and processing facilities, and energy supply facilities during conditions of an energy supply alert or energy emergency. In developing any energy allocation programs, provisions shall be made for the equitable distribution of energy among the geographic areas of the state which are experiencing an energy shortage.

Section 5. Information obtainable by governor. (1) The governor may obtain information from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state necessary for him, with advice of the committee, to determine the need for energy supply alert and emergency declarations. Such information may include but is not limited to:

(a) sales volumes by customer classifications;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In obtaining information under subsection (1) of this section during a state of energy emergency the governor may subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and cause the depositions of persons residing within or without Montana to be taken in the manner prescribed for depositions in civil actions in district courts, to obtain information relevant to energy resources that are the subject of the proclaimed emergency or associated disaster.

(3) In obtaining information under this section, the governor shall:

(a) seek to avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for his study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(4) Nothing in the act requires the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(5) The governor shall forward to the committee such

information collected under this section as the committee may request and shall advise the committee of the progress of the information gathering process.

Section 6. Advice of distributors and consumers. The governor shall actively solicit the advice of consumers, through the legislative consumer committee established in 5-15-101, and of distributors throughout the information gathering, planning, and implementation process described in [this act].

Section 7. Submission and approval of curtailment plans. (1) The governor may at any time require a distributor of an energy resource to prepare for his approval a plan for the curtailment of the distribution of that resource in the event of a state of energy emergency. Plans shall be submitted in such form and within such limits as the governor shall specify, and shall recognize the obligations and duties which may be placed upon distributors subject to [this act] by other jurisdictions, both state and federal.

(2) Approval of plans for curtailment shall be based on the following factors:

(a) the consistency of the plan with the public health, safety, and welfare;

(b) the technical feasibility of implementation of the plan;

(c) the effectiveness with which the plan minimizes the impact of any curtailment;

(d) the needs of commercial, agricultural, retail, professional, and service establishments whose normal function is to supply goods or services, or both, of an essential nature, including but not limited to food, lodging, fuel, and medical care facilities;

(e) the regional agreements or contracts of the distributors; and

(f) the advice of the committee.

Section 8. Governor's considerations. In determining whether to declare an energy supply alert or energy emergency, the governor shall consider:

(1) availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) availability of short-term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of such declaration and the implementation of any curtailment or conservation plans;

(5) the advice of the committee; and

(6) any other relevant factors.

Section 9. Energy supply alert. (1) The governor may upon finding that an energy alert condition exists, declare

the same for a period of not longer than 90 days, setting forth the reasons therefor. Such declaration may be renewed for 90-day periods thereafter upon a finding that the energy alert condition will continue for such further period.

(2) Whenever the governor has declared an energy supply alert, he may by executive order direct actions:

(a) reducing energy resource usage by state agencies and political subdivisions;

(b) promoting conservation, prevention of waste and salvage of energy resources and the materials, services, and facilities derived therefrom or dependent thereon, by state agencies and political subdivisions.

Section 10. Emergency energy -- powers of governor. In addition to his existing powers and duties, the governor shall have the following duties and special energy emergency powers subject to the definitions and limitations in [this act]:

(1) The governor with the advice of the committee may, upon finding that a situation exists which threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers further enumerated in this section shall become effective.

(2) The condition of energy emergency terminates after

March 16,

Natural Resources Committee 19 79

House Bill 329

Page 9

14 consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may, with the advice of the committee:

(a) implement such programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy; provided that in so doing, the governor shall impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency;

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control;

and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) Nothing in [this act] means that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by [this act] has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of [this act], all actions authorized or required hereunder or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act of 1971, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, nothing in [this act] exempts a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor, or unless impossibility of compliance is a direct result of an order of the governor.

Section 11. Obligations of state and local executives.
To protect the public welfare during conditions of energy

alerts or emergencies, the chief executive of each political subdivision of the state, including local governments with self-government power, and each state agency shall carry out in its jurisdiction such energy supply alert or energy emergency measures as may be ordered by the governor.

Section 12. Coordination with federal provisions. In order to attain uniformity, as far as is practicable throughout the country in measures taken to aid in energy crisis management, all action taken under [this act] and all orders and rules made pursuant to it shall be taken or made with due consideration for and consistent when practicable with the orders, rules, actions, recommendations, and requests of federal authorities.

Section 13. Compliance. Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor with the advice of committee to comply with an order issued or action taken pursuant to [this act] shall comply.

Section 14. Orders to distributors. The governor may order any distributor to take such action on his behalf as may be required to implement orders issued pursuant to section 10 and no distributor or person is liable for actions taken in accordance with such order.

Section 15. Liability. No distributor or person is liable for damages to persons or property resulting from

action taken in accordance with orders or rules issued pursuant to [this act] or actions taken pursuant to orders, rules, actions, recommendations, and requests of federal authorities.

Section 16. Rules and executive orders. Notwithstanding the exemption from the provisions of the Montana Administrative Procedure Act granted to the governor in Title 2, chapter 4, MCA, the governor may adopt rules necessary to implement [this act] and cause their adoption and publication to be completed in the same manner as the adoption and publication of agency rules. In addition, executive orders of the governor implementing provisions of [this act] shall be published in the Montana Administrative Register upon request of the governor.

Section 17. Civil defense laws supplemented. The powers vested in the governor under [this act] are in addition to and not in lieu of emergency powers vested in him under Title 10, chapter 3, or any other law of Montana.

Section 18. Governor may authorize expenditure. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an energy emergency is declared by the governor and justifies the expenditure as set forth in 10-3-311 for other emergency or disaster expenditures.

March 16,

1979

Natural Resources Committee

House Bill 329

Page 13

Section 19. Penalties. A person convicted of violating [this act] is guilty of a misdemeanor. Each day of violation, after notice of violation, constitutes a separate offense.

Section 20. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Period of effectiveness. This act is effective on passage and approval and remains in effect until July 1, 1985. "

P.A.
And, as so amended,
BE CONCURRED IN

1 STATEMENT OF INTENT RE: HB 329

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4 Because section 16 of this bill delegates authority to
5 the governor to adopt administrative rules, this statement
6 of intent is attached to the bill pursuant to 5-4-404, MCA.

7 Rules adopted under section 16 may include guidelines
8 for determining the types and extent of limitations to be
9 placed on energy use when a curtailment of essential
10 services or production of essential goods has or will take
11 place as the result of an existing or imminent shortage of
12 energy, thereby causing an energy emergency to be declared.

13 Further, the rules adopted may include guidelines
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15 when a condition of energy supply will affect significantly
16 the availability of essential energy supplies under the
17 declaration of an energy supply alert. The rules may also
18 include guidelines used in determining whether supply
19 conditions warrant a condition of energy supply alert or
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21 All rules adopted pursuant to this bill shall be with
22 the advice of the energy policy committee established by
23 this bill.

24 First adopted by the SENATE NATURAL RESOURCES COMMITTEE
25 on March 19, 1979.

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HB 329